

104 CMR 33.00: DESIGNATION AND APPOINTMENT OF QUALIFIED MENTAL HEALTH PROFESSIONALS

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33.01: Legal Authority to Issue

The Department is authorized by M.G.L. c. 123, §§ 1 and 2 to promulgate regulations establishing qualifications for the designation and appointment of psychiatrists, psychologists, and psychiatric nurse mental health clinical specialists to perform certain responsibilities pursuant to the provisions of M.G.L. c. 123.

33.02: Authorization to Apply for Hospitalization Pursuant to M.G.L. c.123, § 12(a)

- (1) The following persons may perform an examination and apply for hospitalization pursuant to M.G.L. c. 123, § 12(a):
 - (a) Physician. Any physician who is licensed pursuant to M.G.L. c. 112.
 - (b) Qualified Psychologist. Licensure pursuant to M.G.L. c. 112, §§ 118 through 129A is required to obtain and maintain status as a Qualified Psychologist.
 - (c) Qualified Psychiatric Nurse Mental Health Clinical Specialist. Licensure pursuant to M.G.L. c. 112, § 80B and authorization by the Board of Registration in Nursing to practice as a qualified psychiatric nurse mental health clinical specialist is required to obtain and maintain status as a Qualified Psychiatric Nurse Mental Health Clinical Specialist.
- (2) In an emergency, if a physician, Qualified Psychologist, or Qualified Psychiatric Nurse Mental Health Clinical Specialist is not available, a police officer may apply for hospitalization pursuant to M.G.L. c. 123, § 12(a).
- (3) Application for hospitalization pursuant to M.G.L. c. 123, § 12(a) shall be made upon such form as is prescribed by the Commissioner.

33.03: Designation of Physicians Pursuant to M.G.L. c. 123, § 12(b)

- (1) Designated Physicians. A Designated Physician is a physician who satisfies the requirements established by 104 CMR 33.03(1)(b) for purposes of authorizing certain admissions pursuant to M.G.L. c. 123, § 12(b).
 - (a) A public or private facility which admits patients under M.G.L. c. 123, § 12 may designate a physician on its medical staff who meets the qualifications set forth in 104 CMR 33.03(1)(b) as a Designated Physician to authorize admissions to such facility for up to ten days under M.G.L. c. 123, § 12(b).
 - (b) To be eligible for such designation under 104 CMR 33.03, a physician shall demonstrate an understanding of the legal and clinical requirements for hospitalization under M.G.L. c. 123, § 12(b), and
 - 1. shall be certified or eligible to be certified by the American Board of Psychiatry and Neurology, or shall have had six months accredited residency training in psychiatry, or shall be enrolled in and working at an accredited psychiatry residency training site; and
 - 2. shall be privileged to admit to the facility; and
 - 3. shall be licensed to practice medicine under M.G.L. c. 112.
 - (c) Designations shall be made and renewed at such periods of time as may be established by the facility for such medical staff designations.
 - (d) Authorization for admission pursuant to M.G.L. c. 123, § 12(b) shall be made upon such form as is prescribed by the Commissioner.
 - (e) Where extenuating circumstances exist, the Commissioner may, after consultation with the Deputy Commissioner for Clinical and Professional Services, from time to time waive the qualification requirements set forth in 104 CMR 33.03(1)(b)1. Requests for waiver shall detail the circumstances justifying such waiver. If the Department grants a waiver, it shall attach such conditions regarding training, experience, supervision, and consultation that it deems necessary to safeguard the admission process pursuant to M.G.L. c. 123, § 12(b).

33.04: Designation of Forensic Psychiatrists and Psychologists

(1) Assistant Commissioner or Assistant Commissioner for Forensic Mental Health is the individual, or his or her designee, who has been appointed by the Commissioner of Mental Health as the Assistant Commissioner of the Department of Mental Health with primary responsibility for forensic mental health.

(2) Designated Forensic Psychiatrist. A Designated Forensic Psychiatrist is a psychiatrist who satisfies the requirements established by 104 CMR 33.04(2)(b). A Designated Forensic Psychiatrist shall have authority to conduct examinations and observations and to make reports under the provisions of M.G.L. c. 123, §§ 12(e), 15, 16, 17, 18, and 35.

(a) Designation. Each person who seeks the status of Designated Forensic Psychiatrist shall apply to the Assistant Commissioner for Forensic Mental Health. The designation shall be valid for three years.

(b) Qualifications. The successful applicant shall furnish evidence satisfactory to the Assistant Commissioner that he or she:

1. is licensed to practice medicine under M.G.L. c. 112, § 2; and
2. either:
 - a. is certified or eligible to be certified by the American Board of Psychiatry and Neurology; or
 - b. has completed at least three years of post-graduate medical training, of which two years must be in an accredited psychiatric residency training program; and
3. has completed an approved training visit to Bridgewater State Hospital, a Department of Mental Health facility, a District Court that has Department of Mental Health forensic services, and a County Jail or House of Correction; and
4. has completed a reasonable number of at least two different kinds of forensic evaluations in two different settings as determined by the Assistant Commissioner, under the supervision of and acceptable to a Forensic Mental Health Supervisor; and
5. has successfully completed an examination given by a Forensic Mental Health Supervisor, which must include a standardized written examination and may include an oral examination; and
6. has submitted letters attesting to his or her professional capabilities from at least two licensed mental health professionals familiar with his or her work.

(c) Waiver/Other Designations.

1. Psychiatrists who have extensive previous experience in forensic mental health work may make application to the Assistant Commissioner or his or her designee for waiver of the requirements established in 104 CMR 33.04(2)(b) for designation as a Designated Forensic Psychiatrist. Such psychiatrists must submit samples of forensic evaluations of a quality acceptable to the Assistant Commissioner or his or her designee and must successfully complete a written examination to demonstrate proficiency in forensic mental health work.
2. Psychiatrists who have met similar criteria for appointment as forensic psychiatrists in other states, or who have completed a fellowship in forensic psychiatry, or who are diplomates of the American Board of Forensic Psychiatry, may apply for, and at the discretion of the Assistant Commissioner be granted, a waiver of the above requirements.

(d) Requirements for Maintaining Status as a Designated Forensic Psychiatrist. To maintain the designation, a Designated Forensic Psychiatrist shall:

1. make available for review by the Assistant Commissioner at all reasonable times copies of forensic mental health reports with identifiers removed that he or she has completed in the capacity of a Designated Forensic Psychiatrist; and
2. participate in periodic reviews of his or her forensic mental health work by a Forensic Mental Health Supervisor; and
3. participate in forensic mental health training programs approved or conducted by the Assistant Commissioner for Forensic Mental Health.

(e) Psychiatric Residents. Psychiatric residents who do not meet the requirements established in 104 CMR 33.03(2)(b) are not eligible to be Designated Forensic Psychiatrists, but they may conduct evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 18, and 35 provided that they are participating in training approved by the Assistant Commissioner. Such training shall include both didactic and supervisory elements.

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(3) Designated Forensic Psychologist. A Designated Forensic Psychologist is a psychologist who satisfies the requirements established by 104 CMR 33.04(3)(b) for purposes of conducting certain observations and examinations and preparing certain reports pursuant to M.G.L. c. 123, §§ 12(e), 15, 16, 17, 18, and 35.

(a) Designation. Each person who seeks the status of Designated Forensic Psychologist shall make application therefor to the Assistant Commissioner for Forensic Mental Health. The designation shall be valid for three years.

(b) Qualifications. The successful applicant shall furnish evidence satisfactory to the Assistant Commissioner that he or she:

1. is licensed by the Board of Registration of Psychologists and possesses a doctoral degree; and
2. worked for at least two full-time years post-doctorate as a psychologist doing clinical work, provided, however, that five years of clinical work after completion of a Master's degree in psychology may be substituted for one year of post-doctorate work; and
3. worked at least 1,000 hours, supervised by at least one licensed mental health professional, with psychiatric patients on an inpatient unit which accepts involuntary patients, during internship or thereafter; and
4. completed an approved training visit to Bridgewater State Hospital, a Department of Mental Health inpatient facility, a District Court which has Department of Mental Health forensic services, and a County Jail or House of Correction; and
5. completed at least two different kinds of forensic evaluations in two different settings as determined by the Assistant Commissioner, under the supervision of and acceptable to a Forensic Mental Health Supervisor; and
6. successfully completed an examination given by a Forensic Mental Health Supervisor, which must include a written examination and may include an oral examination; and
7. has submitted letters attesting to his or her professional capabilities from at least two licensed mental health professionals familiar with his or her work.

(c) Waiver/Other Designations. Psychologists who have met similar criteria for appointment as a forensic psychologist in other states, or who are diplomates of the American Board of Forensic Psychology, or who have extensive previous experience in forensic mental health work may, make application to and may at the discretion of the Assistant Commissioner be granted a waiver of the above requirements for appointment as a Designated Forensic Psychologist. Such psychologists must submit samples of forensic evaluations of a quality acceptable to the Assistant Commissioner or his or her designee and must successfully complete a written examination to demonstrate proficiency in forensic mental health work.

(d) Requirements for Maintaining Status as a Designated Forensic Psychologist. To maintain the designation, a Designated Forensic Psychologist shall:

1. make available for review by the Assistant Commissioner at all reasonable times copies of forensic mental health reports with identifiers removed that he or she has completed in the capacity of a Designated Forensic Psychologist; and
2. participate in periodic reviews of his or her forensic mental health work by a Forensic Mental Health Supervisor; and
3. participate each year in forensic mental health training programs approved or conducted by the Assistant Commissioner for Forensic Mental Health.

(e) Psychology Fellows. Post-doctoral psychology fellows who do not meet the requirements established in 104 CMR 33.04(3)(b) are not eligible for appointment as Designated Forensic Psychologists, but they may conduct evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 18, and 35 provided that they are participating in training approved by the Assistant Commissioner. Such training shall include both didactic and supervisory elements.

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(4) Forensic Mental Health Supervisor. The Assistant Commissioner for Forensic Mental Health shall, from time to time, appoint forensic mental health professionals, on the basis of their experience as evaluators and teachers, or other special contributions in forensic mental health work, as Forensic Mental Health Supervisors. A supervisor must be an experienced forensic mental health professional who is authorized by the Assistant Commissioner for Forensic Mental Health to examine and supervise applicants for appointment as Designated Forensic Psychiatrist and Designated Forensic Psychologist. Except under extraordinary circumstances, Forensic Mental Health Supervisors shall be Designated Forensic Psychiatrists or Designated Forensic Psychologists.

(5) Appointment of Other Physicians and Psychologists for the Examination of Prisoners The Assistant Commissioner for Forensic Mental Health may, from time to time, appoint physicians and psychologists to examine persons confined in a place of detention as to whether they are in need of hospitalization at a facility or Bridgewater State Hospital, in accordance with M.G.L. c. 123, § 18. These physicians and psychologists shall not be considered qualified to perform other evaluations performed by Designated Forensic Psychiatrists or Designated Forensic Psychologists without meeting the requirements set forth in 104 CMR 33.04(2)(b) or 33.04(3)(b).

(a) In appointing physicians and psychologists for this purpose, the Assistant Commissioner or his or her designee shall consult with the Superintendent of Bridgewater State Hospital to:

1. develop ongoing standards for clinical screening of such persons and for liaison between the place of detention and the facility or Bridgewater State Hospital; and
2. ensure that physicians and psychologists appointed for this purpose are familiar with such standards, and practice in accordance with them.

(b) A physician appointed for this purpose shall be licensed to practice medicine under Massachusetts law; and

1. shall be certified or eligible to be certified by the American Board of Psychiatry and Neurology, or
2. shall have had three years experience in the examination and treatment of mentally ill persons.

(c) A psychologist appointed for this purpose shall be licensed as a psychologist under Massachusetts law and shall have had three years experience in the examination and treatment of mentally ill persons.

33.05: Denial or Revocation of a Designation or Appointment

(1) Any person designated pursuant to 104 CMR 33.04(2) or (3), who no longer meets the requirements to maintain his or her status, may have the designation or appointment revoked. Written notice of the Department's intent to revoke, stating in general terms the basis for the decision to revoke the designation or appointment, shall be posted by certified mail to the address of record of the person at least ten calendar days prior to the effective date of the revocation.

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(2) Any person who seeks a designation pursuant to 104 CMR 33.04(2) or (3) and is denied such designation or who receives such notice of revocation may request a hearing before a designee of the Commissioner no later than 20 calendar days after receipt of said notice. If such a hearing is requested, the designee may suspend a revocation pending the outcome of the hearing. If a revocation is not suspended pending the outcome of the hearing, or if the appeal concerns a denial of a requested designation, the hearing shall commence within 30 calendar days of the effective date of the revocation or denial. To the extent practicable, the Informal/Fair Hearing Rules established in 801 CMR 1.02, *et seq.* shall be used for such hearings. A decision to revoke a designation or to confirm a denial of a requested designation after hearing may be appealed to the Commissioner.

(3) Designation as a Designated Physician with authority to admit to a particular facility is subject to revocation in accordance with the standards and procedures established for medical staff appointments for that facility.

(4) Appointment as a Forensic Mental Health Supervisor pursuant to 104 CMR 33.04(4) and appointment as a physician for specified purposes pursuant to 104 CMR 33.04(5) may be revoked at the discretion of the Assistant Commissioner for Forensic Mental Health.

REGULATORY AUTHORITY

104 CMR 33.00: M.G.L. c. 123, §§ 1 and 2.

NON-TEXT PAGE